

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SILVON SIMMONS,

Plaintiff,

v.

JOSEPH M. FERRIGNO, II, SAMUEL GIANCORSIO,
MARK WIATER, CHRISTOPHER MUSCATO,
ROBERT WETZELL, MICHAEL CIMINELLI, JOHN
DOES 1-20, CITY OF ROCHESTER,
SHOTSPOTTER INC., SST, INC., JOHN DOES 21-30
and PAUL C. GREENE,

Defendants.

VOIR DIRE MATERIAL

Case No.: 17-cv-6176

VOIR DIRE INFORMATION

A. DESCRIPTION OF THE CASE

On April 1, 2016 at around 8:10 p.m., Plaintiff was involved in an argument in front of his house at 9 Immel Street where gunfire erupted. Later that evening, at approximately 8:55 p.m. Plaintiff was riding in a Chevy Impala operated by Detron Parker (hereinafter "Parker"). He and Parker drove from 9 Immel Street to a liquor store and then a convenience store. They returned to 9 Immel Street a short time later.

After City of Rochester Police Officers Joseph Ferrigno and Sam Giancursio concluded a traffic stop, they observed Parker's vehicle, which matched the make, model and description of a violent individual that was wanted by the police. The officers, driving separate road patrol vehicles, proceeded to follow Parker's vehicle to 9 Immel Street where Parker backed the vehicle into the driveway and subsequently turned it off. Officer

Giancursio drove down the opposite end of Immel while Officer Ferrigno drove behind Parker's vehicle and stopped vehicle along the curb at the end of the driveway of 9 Immel Street. Officer Ferrigno exited his vehicle and noticed that both front doors of the vehicle start to open. Suspecting it was the wanted suspect, Officer Ferrigno shouted "Police, Stop," but Plaintiff exited the vehicle and ran towards the back yard further up the driveway. Officer Ferrigno started running up the driveway towards Plaintiff. Plaintiff continued running away from Officer Ferrigno and further towards the backyard of 7 Immel Street.

Plaintiff turned toward 7 Immel Street, Officer Ferrigno saw Plaintiff reach back as he was running and a muzzle flash, and heard a gunshot. Officer Ferrigno then fired at Plaintiff. ShotSpotter sensors located near the area of Immel Street recorded five gunshots at or near 9 Immel Street: a single gunshot, followed by four louder shots in rapid succession. The rush of the gunshot was felt and heard by Officer Giancursio, who was running up the driveway.

After being shot, Plaintiff continued towards 7 Immel Street, by going past or over the fence towards his backyard and attempting to crawl to the back door. Plaintiff was physically unable to get to the backdoor and fell in the yard. When Officer Giancursio made it to the backyard and saw the Plaintiff laying in the yard, he searched and handcuffed the Plaintiff. When other officers later found a Ruger handgun a few feet from where the Plaintiff had fallen. Police technicians were unable to recover enough DNA from the Ruger handgun to match it to the Plaintiff. Witnesses offered varying testimony as to whether a shell casing was or was not stuck in the ejection point of the Ruger.

Plaintiff was treated and taken from the scene, by ambulance, to Strong Hospital. Plaintiff recovered at the hospital and after recovery, he was taken to the Monroe County Jail.

B. ATTORNEY IDENTIFICATION

The Plaintiff is represented by Charles F. Burkwit, Esq. of the Burkwit Law Firm, PLLC located at 16 East Main Street, Suite 450, Rochester, NY 14614. Mr. Burkwit will be assisted by paralegal Barbara M. Peck

Defendants are represented by John M. Campolieto of the City of Rochester Corporation Counsel's Office located at 30 Church Street, City Hall, Room 400A, Rochester, NY 14610. Second chair at this trial will be Christopher Noone, Esq. and assisting paralegal Sandra Zollars. Both Mr. Noone and Ms. Zollars are employed at the City of Rochester Corporation Counsel's Office.

It is probable that Ben Kleinman (bkeinman@kilpatricktownsend.com) of the Law Firm of Kilpatrick, Townsend & Stockton LLP located at Two Embarcadero Center, Suite 1900, San Francisco, CA 94111 and Jordan Trent Jones of the Law Offices of Jordan Trent Jones, (jtrjones@jtrjoneslaw.com) 2268 Westborough Boulevard, Suite 302 #201, South San Francisco, CA 94080. The assistance of Mr. Keinman and Mr. Jones will be solely for the purposed of examination of the witness Paul Greene and ShotSpotter evidence.

C. FULL NAME AND ADDRESS OF THE CLIENTS

CITY OF ROCHESTER located at 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

JOSEPH FERRIGNO, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

SAM GIANCURSIO, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

MARK WIATER, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

CHRISTOPHER MUSCATO, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

ROBERT WETZEL, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

MICHAEL CIMINELLI, 30 Church Street, City Hall, Room 400A, Rochester, NY 14610

*Customarily during legal proceedings, in this area, police officers (current or retired, are permitted to use their attorney's address. If that is not the case in this matter, addresses will be provided.

D. PROSPECTIVE WITNESSES

Flamur Zenelovic, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Joseph Ferrigno, witness and involved in the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Gary Galetta, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

John Brennan, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Frank Umbrino, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Michael Ciminelli, named party, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Jeremy Lindauer, II, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

William Gallagher, provided care for Plaintiff after the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Samuel Giancursio, witness and involved in the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Patrick Giancursio, witness to the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Robert Wetzel, named party, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Christopher Muscato, named party, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Cynthia Muratore, investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

William Wagner, present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Michael DiMauro, present at scene after the shooting, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Joseph Zampatori, present at scene after the shooting, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Amy Bauer, present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Christopher Kaltenbach present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Dylan Minnick present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410 t

Whitney Unrath present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Steven Mitchell present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Paul Greene, to provide information regarding ShotSpotter mechanics and investigation of gunfire recorded at Immel Street on April 1, 2016 around 9:10 p.m., 6518 Westbrook Drive, Citrus Heights, CA 95622 phone unknown

Elena Correia, present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Steven Mitchell, present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Jason Vaughn, involved with arrest of Silvon Simmons under CR. No. 2013-00232303, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Shawneequa Tillison, believed to be neighbor of Silvon Simmons and present the night of the incident, 9 Immel Street, Rochester, NY 14611

Brandon Gotham, technician who worked the scene of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Eric Ferguson, present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Brandon Lasage, Information Technology employee for the City of Rochester and knowledgeable of discontinuance of use of AVLS by the City of Rochester, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Angel Pagan present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Steven Rice present at scene after the shooting and investigation of the incident, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Isheka Banks, former girlfriend of Silvon Simmons and present the night of the incident, it is believed that she resides/ed at 5 Immel Street, Rochester, NY 14611 phone unknown

Kenneth Coniglio, escorted officer involved to sequestration after shooting, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Joshua Yeomas, involved in another incident with Silvon Simmons, believed to reside at 20 Immel Street, Rochester, NY 14606 phone unknown

Shaymara Thompson, involved in another incident with Silvon Simmons, believed to reside at 20 Immel Street, Rochester, NY 14606 phone unknown

Laszlo Tordai, former head of PSS for Rochester Police Department, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Mark Wiater, named party, 30 Church Street, City Hall, Room 400A, Rochester, NY 14614, (585) 428-7410

Ashley Carey, involved in another incident with Silvon Simmons believed to reside at 9.5 Immel Street, Rochester, NY 14606 phone unknown

ERIC FREEMESSER, Expert Witness, Firearm and Toolmark Section Supervisor, at Monroe County, will testify to firearms at issue in this incident, business address being the Monroe County Crime Laboratory 85 West Broad Street, Rochester, NY 14614

STEVEN FISCHER, Expert Witness, Research Technician at Emergency Communications Department/911 Center, will testify concerning radio communication between the Rochester Police Department members on April 1, 2016, 321 West Main Street, Rochester, NY 14608

STEPHEN J. WARD, Police Sergeant with the Professional Development Section of the Rochester Police Department, will testify regarding the firearms fired on April 1, 2016 and the fire arm training of the Rochester Police Department, his business address being 1190 Scottsville Road, Rochester, NY, as an expert witness to testify on the City Defendants' behalf at the trial of this matter.

PROPOSED QUESTIONS FOR THE JURY

- Where do you live and how long have you lived there?
- Are you employed? Please describe last employment, or if employed your current employment?
- Have you ever held a job in law enforcement? If so, what position? When? How did it come to an end?

- Have you ever held a job or position that required you to work with a law enforcement office or agency?
 - Which law enforcement agency?
 - What type of interaction did you have with the law enforcement agency?
 - Was it positive or negative experience? If negative, can you separate your negative feelings from the RPD and officers in this case?
- Do you believe there is something wrong with policing in this City? In the State?
In terms
- Do you believe that policing is an inherently a white supremacist institution?
- Do you believe that police officers are racist?
- Do you believe that police departments should be defunded?
- Have you participated in any protests or demonstrations against police departments or police actions? When? When?
- Have you participated in any protests or demonstrations for the “Black Lives Matter” organization? When? When?
- Do you live with someone?
- What is person’s occupation?
- Does anyone you live with participate belong to the “Black Lives Matter” organization?
- Has that person participated in any protests of police departments or police actions?
- Has that person participated in any demonstrations in support of people who allege that they have been harmed by police?

- Do you have children? If yes, how many? What ages? If your children are over 18, do they attend college?
- Have you ever practiced law? Do you know anyone that has practiced law?
- Do you regularly read newspapers or magazines? Which ones?
- Do you regularly watch television? What do you watch?
- Do you regularly listen to the radio? If so, what do you listen to?
- What activities or hobbies do you engage in?
- Have you ever served in the military? If so, what branch?
- Have you or anyone in your family or household or children or friends been involved in a lawsuit? If so, please describe the lawsuit and was the result satisfactory or unsatisfactory?
- Have you ever been a juror before?
 - Did the case go to verdict?
 - Were you able to deliberate freely, without undue influence from other jurors
 - Did you actively participate?
 - Would you like to sit on this jury? Why? Why not?
- Do you have a negative perception of the City of Rochester? City of Rochester employees? Why?
- Do any jurors live or have lived in the City of Rochester
- If any jurors lived in the City and moved away from the City, why did you move from the City of Rochester?

- Have you worked for the City of Rochester?
- Any issues with the City or City employees working in the City of Rochester
- Any interaction with City employees? If so any thoughts or problems with those interactions?
- Do you know anyone that works for the City of Rochester? What are their thoughts about the City of Rochester ?
- Are you aware of any other civil cases involving police officers , especially as they relate to use of force by police? If so, would your knowledge or understanding of those cases impact your ability to consider the evidence presented in this case with an open mind and to deliberate without bias or sympathy for the Plaintiff?
- Are you or anyone you know involved with the Rochester Police Accountability Board Alliance? What if the nature or your involvement?
- Have you or a member of your family or household or any close friend ever had any interaction with the Rochester Police Department or any other law enforcement agency? If so, give details, for example: emergency assistance, traffic stop, crowd control, arrest, reporting crime, etc. [Can be explained outside the presence of the other prospective jurors.]
- What was your impression of the police officers following the interaction you've described? [Can be explained outside the presence of the other prospective jurors.]
- Will those interactions have any impact on your ability to hear and evaluate the evidence in this case fairly and impartially?

- Have you or a family member or close friend ever made a complaint about a police officer, a detective or other law enforcement officer? [If so, describe outside the presence of the other potential jurors.] To what person or agency was the complaint made? (The law enforcement agency? The Police Accountability Board? The Division of Human Rights?)
- Have you or has any member of your family or any close friend ever been the victim of a crime? If so, please describe the circumstances.
- Are you familiar with the area of 9 Immel Street in the City of Rochester? Describe your familiarity.
- Do you know the plaintiff, Silvon Simmons?
- Do you know the plaintiff's attorney, Charlie Burkwit?
- Do you know the defendant Joseph Ferrigno? Samuel Giancursio?
- Do you know the defendants' attorneys, John Campolieto or Christopher Noone?
- Do you believe that the fact that the plaintiff started this lawsuit and is here today for trial means that there must be at least some merit to the plaintiff's allegations?
- Do you believe that a person who is injured is entitled to compensation regardless of whether the injury is anyone else's fault?
- If you are chosen for the jury, will you be partial to one side or the other?

- Are there any reasons why you would be unable to follow the Judge's instructions on the law?
- Can and will you decide this case based solely on the facts presented at trial, and not based on anything you may have seen or heard in the media or outside the courtroom?
- If, after hearing the evidence and the instructions of the judge, you found that the plaintiff may have been injured, but that plaintiff failed to prove that his injuries resulted from any unlawful conduct by the defendants, would you feel comfortable returning a verdict in favor of the defendants? If so, why?
- Would you be unable to apply the law as you are instructed to do by the Judge even if you don't agree with the law or believe that the law is morally wrong?

DATED: March 1, 2024
Rochester, New York

Patrick Beath Corporation Counsel

s/John Campolieto

By: John M. Campolieto., of Counsel
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